Office - Supreme Court, U. S.
FILED
JUL 15 1941
CHARLES ELMORE CROPLEY
CLERK

(14)

4-648

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 279

WHITE SWAN COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

H. C. A. HOFACKER,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Petition for a writ of certiorari	1
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Portions of the Constitution of the United States involved	4
Statement	4
Specification of errors to be urged	6
Reasons for granting writ	7
Conclusion	13

Table of Cases Cited.

Abe Lainer, d/b/a Lainers Cleaners & Dyers Co., et al., Mass. L. R. C., Case Nos. U. P. 101, 134, 139, 4/27/38	11
Badger Nu-Way Cleaners, et al., Wisc. L. R. B., Case No. 31, Ce 2, Dec. No. 19, 9/23/39	13
Bonnano Laundry & Supply Co. (1940), Mass. L. R. C., Case No. C. R. 403, Nov. 1940	12
Budget Laundry Co., et al., Pa. L. R. B., Case No. 170, 4/12/38	13
C. & W. Dyeing & Cleaning Co., Inc., et al., Mass. L. R. C., Case No. U. P. 10, 2/10/38	11
Caminetti v. *United States*, 242 U. S. 470	10
Capitol Laundry Co. (1940), Mass. L. R. C., Case No. C. R. 406, 11/6/40	12
Commonwealth v. *Pearl Laundry Co.*, 105 Ky. 259, 49 S. W. 26	7
Community Laundry Co., Inc., et al. (1937), Pa. L. R. B., Case No. 123, 5/13/39	13
Consolidated Laundry Corp., et al. (1937), N. Y. S. L. R. B., Dec. No. 4, 9/16/37	12
Covington, etc., Bridge Co. v. *Kentucky*, 154 U. S. 209	8

Page

Crandall, McKenzie & Henderson, Inc., et al. (1939), Pa. L. R. B., Dec. No. 92, 2/26/40 13
East Cleaners & Dyers, Inc., et al. (1938), Pa. L. R. B., No. 196, 4/20/39 13
Eastern Overall Dry Cleaning Co., et al., (1940), Mass. L. R. C., Case No. U. P. 396, 1/19/40 ..... 11, 12
Economy Clean Towel Supply Co., Inc., et al. (1938), N. Y. S. L. R. B., Dec. No. 198, 7/20/38 12
Farnsworth New Method Laundry Co., Inc. (1940), Mass. L. R. C., Case No. C. R. 375, 8/13/40 12
Fox Square Laundry Co., Inc., et al. (1939), N. Y. S. L. R. B., Dec. No. 669, 9/21/39 12
Francis V. and Edwin U. Cahill d/b/a Union Laundry, et al., Mass. L. R. C., Case No. U. P. 93, 5/23/38 11
Golden Bell Cleaners, Inc. (1940), Mass. L. R. C., Case No. C. R. 333, 4/29/40 12
Hill Toy Laundry, Inc., et al. (1940), N. Y. S. L. R. B., Dec. No. 838, Case No. W. E.-156, 5/25/40 12
Holy Trinity Church v. *United States*, 143 U. S. 457 10
Howes Co., et al., Mass. L. R. C., No. U. P. 281, 5/22/39 11
Hub Laundry Co. (1940), Mass. L. R. C, Case No. C. R. 424, 12/12/40 12
Laundry Workers Int. Union et al. (1940), W. L. R. B., Case No. 74, Ce-11, Dec. No. 47, 2/23/40 13
Liberty Laundry, et al. (1939), Pa. L. R. B., Case No. 70, 11/21/39 13
Lincoln Laundry Co., et al. (1939), Pa. L. R. B., Dec. No. 136, 1/16/40 13
Lewandos French Dyeing & Cleansing Co. (1940), Mass. L. R. C., Case No. C. R. 341, 5/6/40 12
Loyal Crown Linen Service, Inc., et al. (1939), Mass. L. R. C., Case No. U. P. 251, 1/11/39 11
Midtown Laundry, Inc., et al. (1940), N. Y. S. L. R., Dec. No. 804, Case No. S. E.-4197, 2/8/40 12
Morgan Laundry Service, Inc. (1940), Mass. L. R. C., Case No. C. R. 386, 9/12/40 12
Naif Makol World Cleaners & Dyers Co., et al., Mass. L. R. C., Case No. U. P. 85, 5/23/38 11

Page

N. L. R. B. v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1 8
N. L. R. B. v. *White Swan Co.*, 118 F. (2d) 1002, 19 N. L. R. B. 1079, 61 Sup. Ct. 751 2
Pierce v. *New Hampshire*, 5 How. 574, 12 L. Ed. 256 8
Premier Linen Supply & Laundry Co., Inc., et al. (1939), N. Y. S. L. R. B., Dec. No. 738, 11/22/39 12
Prompt Family Laundry, Inc., et al. (1940), N. Y. S. L. R. B., Dec. No. 771, 1/9/40 12
Protective Motor Service Co., 21 N. L. R. B. 50 8
Quality Laundry Service, Inc., et al. (1937), N. Y. S. L. R. B., Dec. No. 10, 11/1/37 12
Sani-Wash Laundry Co., et al., Mass. L. R. C., Case No. U. P. 391, 9/21/39 11
Scannon v. *Kansas City Railroad Co.*, 41 Missouri App. 194 10
Schechter Poultry Co. v. *United States*, 295 U. S. 495 8
Shub, J. H., et al., d/b/a American Dry Cleaning Co. (1940), Mass. L. R. C., Case No. C. R. 347, 5/20/40 12
Smith, Clerk, v. *Jackson*, 54 S. W. 981, 103 Tenn. 673 7
Sorrells v. *United States*, 287 U. S. 435 10
Stapleton Service Laundry, Inc., et al. (1938), N. Y. S. L. R. B., Dec. No. 206, 9/23/38 12
State v. *Louisville R. Co.*, 97 Miss. 35, 51 So. 918 8
Tudor Laundry Co., et al. (1939), N. Y. S. L. R. B., Case No. S. U. 3581, 7/12/39 12
United Laundries Co., et al. (1938), Mass. L. R. C., Case No. C. R. 27, 2/16/38 12
United States v. *DeWitt*, 9 Wall. 44, 19 L. Ed. 593 8
Veazie v. *Moore*, 14 How. 573 10
Wash Rite Laundry Co. et al. (1938), Mass. L. R. C., Case No. U. P. 121, 6/20/38 11
Waukesha Palace Laundry Co. et al., Wisc. L. R. B., Case No. 406, C-24, 4/30/38 13
White Cleaners & Dyers, Inc., et al., 1938, Mass. L. R. C., Case No. U. P. 147, 6/20/38 11

Page

Wilson Laundry Co., et al. (1939), Pa. L. R. B., Case No. 34, 10/9/39 13

STATUTES AND AUTHORITIES CITED.

Act of July 5, 1935, Subsection 6 of Section 6, Ch. 372 (29 U. S. C. A., 152(6)) 2, 6
Act of July 5, 1935, Subsection 7 (29 U. S. C. A. 152(7)) 6
Act of July 5, 1935, Subsection (a) of Section 10 (29 U. S. C. A., 160a) 2, 6
Constitution of the United States:
Article I, Section 8, clause 3 ..... 4, 7
Ninth Amendment 4, 7
Tenth Amendment 4, 7
Fair Labor Standards Act of 1938, Section 13 (a) and (2) 9
Interpretative Bulletin No. 6, issued by the United States Department of Labor, Wage and Hour Division, June, 1941 9
Judicial Code, Section 240a, as amended by the Act of February 13, 1925 2
National Labor Relations Act:
Section 2(6) 3
Section 2(7) 3
Section 10(a) 3
Section 10(e) 3
Senate Committee Report, May 2, 1935, No. 573 10
U. S. Law Week, Vol. 1:
Part 1 (1933-34), page 518 10
Part 2 (1934), page 845 10
Part 2 (1934), page 847 10
Part 2 (1934), page 851 10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 279

WHITE SWAN COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

The White Swan Company prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Fourth Circuit entered on April 15, 1941, modifying and then affirming an order of the National Labor Relations Board.

Opinions Below.

The opinion of the Circuit Court of Appeals is reported in 118 F. (2d) 1002. The findings of fact, conclusions of law and order of the Board are reported in 19 N. L. R. B. 1079. The opinion of the Supreme Court of the United States on certificate issued by the Fourth Circuit Court of

Appeals is found in *N. L. R. B.* v. *White Swan Company*, 61 S. Ct. 751-752.

Jurisdiction.

The decree of the Fourth Circuit Court of Appeals was entered on April 15, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and under Section 10e of the National Labor Relations Act.

Questions Presented.

In the light of the facts, was the lower court justified in holding that the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located on a State line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a State other than that in which the business is located?

Was the lower court, in the light of the facts, justified in holding that a local business, such as a laundry, which happens to be located on a State line and is not engaged in interstate commerce except in so far as it may collect articles to be serviced and make deliveries to customers living across the State line, by reason of such collections and deliveries, deemed engaged in commerce within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6) so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said Section (28 U. S. C. A. 152 (7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a)?

Was the lower court, in the light of the facts, justified in holding that the National Labor Relations Board had jurisdiction over the White Swan Company or that the

Fourth Circuit Court of Appeals itself had jurisdiction over the White Swan Company?

In the light of the evidence submitted, was the lower court justified in holding that there was sufficient substantial evidence to support the findings of fact relative to jurisdiction and relative to unfair labor practice?

Did the lower court fail, in view of the evidence and the facts, to distinguish between that which is National and that which is Local in interstate commerce?

Did the lower court fail, in view of the facts, to properly apply the Act with the result that in this case the Act as applied was contrary to the intent of the Act itself?

Statute Involved.

The pertinent provisions of the National Labor Relations Act are here set forth:

Section 2.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Section 10.

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any

unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

Portions of the Constitution of the United States Involved.

The pertinent provisions of the Constitution of the United States involved are here set forth:

Section 8 (3) Article 1. The Congress shall have power to regulate commerce with foreign nations and among the several states and the Indian Tribes.

Amendment to Constitution, Article 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment to Constitution, Article 10. The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively or to the people.

Statement.

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and Order.

From the Order we find that the White Swan Company is located at Wheeling, West Virginia, on the line dividing West Virginia from Ohio. It operates a laundry and dry cleaning establishment. Part of its business is derived from the transportation of garments in its trucks from customers on the Ohio side of the Ohio River to the petitioner's plant in West Virginia to be serviced. After they are serviced petitioner delivers these garments in its trucks across the Ohio River into Ohio. Approximately 12.93% of petitioner's gross income for 1938 was derived from the servicing of garments which were collected from and delivered to customers in Ohio.

The record shows that the company's service confines itself exclusively to what is known as the Wheeling Industrial District, which district may be defined as that area comprised within a radius of fifteen (15) miles of the City of Wheeling. Were this laundry located back fifteen miles from the State line the questions before us would not arise, and the only reason they are here is because petitioner's plant happens to be located on the Ohio River, which river at this point separates the State of West Virginia from the State of Ohio.

The record shows that petitioner does not purchase, sell, barter, or exchange its product. Neither does it purchase raw materials and process same, nor does it manufacture or change the form, substance, character, utility, or value of the goods it deals in. Title to the goods always remains in the individual. All that the petitioner performs is a service operation on the garments at the instance of the owner.

The record shows that a laundry cannot operate successfully beyond fifteen (15) miles from its plant, therefore, the business must always remain local in character.

The record shows that the Company has no branches or sales agencies and has but one plant and confines all of its advertising to its home town, namely the City of Wheeling, West Virginia.

The Board introduced figures in evidence as part of its proof showing purchases of laundry machinery in an attempt to sustain jurisdiction. It is difficult to understand how this could determine jurisdiction for the reason that a laundry does not process or manufacture anything, nor does it even make annual purchases of machinery.

The lower court was troubled by the question of jurisdiction in this case and on certificate requested the Supreme Court to decide two questions submitted, which the Supreme Court refused to do on the theory that the entire record at

that time was not before it. The entire record is now before the Court for decision on the merits.

The Board's Order in this case called for the petitioner to cease and desist discouraging membership in a Union and from interfering with, restraining, or coercing employees, offer re-employment and make whole three out of eleven employees and the Board dismissed the charges with reference to the other eight employes.

The Fourth Circuit Court of Appeals has now affirmed the order of the Labor Board and the case is now before the Supreme Court on certiorari requested on behalf of the White Swan Company.

Specification of Errors to be Urged.

The lower court erred in holding that the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located on a State line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a State other than that in which the business is located.

The lower court erred in holding that a local business, such as a laundry, which happens to be located on a State line and is not engaged in interstate commerce except in so far as it may collect articles to be serviced and make deliveries to customers living across the State line by reason of such collections and deliveries, is engaged in commerce within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6) so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said Section (29 U. S. C. A. 152 (7) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a).

The lower court erred in holding that the National Labor Relations Board had jurisdiction over the White Swan

Company or that the Fourth Circuit Court of Appeals itself had jurisdiction over the White Swan Company.

The lower court erred in holding that there was sufficient substantial evidence to support the findings of fact relative to jurisdiction and relative to unfair labor practice.

The lower court erred in failing to distinguish between that which is National and that which is Local in interstate commerce.

The lower court erred in properly applying the Act with the result that in this case the Act as applied was contrary to the intent of the Act itself.

Reasons for Granting Writ.

1. The decision of this case is the first one in the United States wherein the National Labor Relations Board was held to have jurisdiction over a small local laundry. If the decision is allowed to stand it means that Federal power can now be exercised on any type of business no matter how small. It is a well known fact that the laundry business is purely a service business, nothing is manufactured, service only is given, and that the average laundry operates within a very small radius. Many laundries are operated by Chinamen. This new ruling that Federal jurisdiction may apply to laundries is contra to decisions with reference to laundries that appear in the past. See *Smith* v. *Jackson*, 54 S. W. 981, 103 Tenn. 673. See also *Commonwealth* v. *Pearl Laundry Company*, 105 Ky. 259, 49 S. W. 26.

In view of the fact that this is the first laundry case decided in the country and in view of the many thousands of laundries operating within the country, and further in view of the fact that this present decision conflicts with others, we believe the Supreme Court should definitely decide the question.

2. Section 8 (3), Amendment Article 9, Amendment Article 10 of the Constitution of the United States are involved

in this case because those portions of the Constitution first give Congress the power to control and regulate commerce and then specifically state that the powers therein not delegated to the United States are reserved to the States or to the people. In view of the fact that petitioner's business in this case was entirely local, we believe that to allow this decision to prevail would mean such an invasion upon the rights of the individual states that it destroys the distinction between that which is National and that which is Local in interstate commerce, all of which is contra to the Constitution. See *U. S.* v. *Dewitt,* 9 Wall. 44, 19 L. Ed. 593; *Pierce* v. *New Hampshire,* 5 How. 574, 12 L. Ed. 256; *Covington, etc., Bridge Co.* v. *Kentucky,* 154 U. S. 209; *State* v. *Louisville R. Co.,* 97 Miss. 35, 51 South 918; *Schechter Poultry Company* v. *U. S.,* 295 U. S. 495; *N. L. R. B.* v. *Jones and Laughlin Steel Corp.,* 301 U. S. 1.

3. The decision in the instant case also conflicts with the decision rendered by the National Labor Relations Board in another case of a similar nature, *In re: Protective Motor Service Company,* 21 N. L. R. B. 50. In this case the Board found that a common carrier did part of its business out of State, yet the Board in that case ruled that it was without jurisdiction itself. Likewise in the instant case, only a small portion of petitioner's business crossed the State line. Yet the Board has ruled that it has jurisdiction. We believe the Court should mold these conflicting decisions.

4. The entire question is one of vital importance to the public because it is a known fact that there are thousands of laundry and dry cleaning establishments located throughout the country employing many thousands of people. It is also a known fact that there are many laundries and service establishments and small businesses which are located on State lines and by reason of their location on State lines, a portion of their business is derived from both

sides of that State line, and it is well now that this question be settled not only for the laundry and dry cleaning business but for those many other so-called service establishments similar to laundries which are located in similar situations.

5. The instant decision also is in conflict with the provisions of the Fair Labor Standards Act of 1938, Section 13 (a) and (2). In an Interpretative Bulletin No. 6 issued by the United States Department of Labor, Wage and Hour Division, under date of June, 1941, construing the Fair Labor Standards Act of 1938, we take the liberty to quote:

> "Service establishments are usually local in character and are usually open to the general consuming public and usually render a service to private individuals for direct consumption. The service is usually purchased in small quantities for private use rather than for industrial and business purposes. Further the service is usually rendered at a retail price."
>
> "Typical examples of service establishments akin to retail establishments within the meaning of the exemption are restaurants, cafeterias, roadside diners, hotels, tourist houses, trailer camps, *home laundries,* barber shops, beauty parlors, public baths, scalp treatment establishments, masseur establishments, funeral homes, embalming establishments, crematories, *establishments engaged in cleaning, dyeing, pressing, altering, and repairing hats, clothing, and household goods for private individuals,* valet service, shoe repair shops, shoe shine parlors, dress suit rental establishments, public garages, *automobile laundries,* drive-it-yourself establishments, battery shops, parking lots, musical instrument repair shops, piano tuning establishments, radio repair shops, watch, clock, jewelry repair establishments, household refrigerator service and repair shops."

6. Construing the Wage and Hour Act laundry establishments are definitely construed not to be in interstate commerce. Yet in the decision under the National Labor Act in

the instant case the same laundries are construed in interstate commerce. This conflict of decisions under two Federal Statutes, we feel, should be molded and conformed by the court. It is also noted that when the NIRA was still in existence laundries and dry cleaning establishments were expressly exempted from the provisions of the National Codes and the NIRA recognized that the laundry and dry cleaning business was a purely local service and not engaged in interstate commerce. See U. S. Law Week Volume 1, Part 1, 1933-34, Page 518; U. S. Law Week Volume 1, Part 2, 1934, Page 845; U. S. Law Week Volume 1, Part 2, 1934, Page 847; U. S. Law Week Volume 1, Part 2, 1934, Page 851.

7. We do not believe it was the intent of the Congress in passing the Wagner Act to project it into intrastate commerce such as is here being done in the instant case. We take the liberty to quote a part of the Senate Committee Report at the time the Act was considered, May 2, 1935, Report No. 573. The following cases also are in point: *Caminetti* v. *U. S.*, 242 U. S. 470 at 490; *Holy Trinity Church* v. *U. S.*, 143 U. S. 457; *Sorrells* v. *U. S.*, 287 U. S. Reports, Page 435; *Scannon* v. *Kansas City Railroad Co.*, 41 Mo. App. 194.

Senate Committee Report No. 573, dated May 2, 1935:

> "The term 'affecting commerce' is inserted as a short cut to prevent the repetition of lengthy jurisdictional phraseology throughout the bill. The bill permits Federal Act to areas sanctioned by the Commerce Clause. The bill does not project Federal government into matters of purely intrastate concern. It applies only in matters which burden or affect or obstruct interstate commerce or which have led or tend to lead to a labor dispute which might have such effect upon interstate commerce."

9. From time immemorial the laundry business has always been considered a local business and subject only to

the jurisdiction of the States. Some of the States have already passed their own little Wagner Acts and in those States where the same have been passed the States have immediately taken jurisdiction over laundries. We are now faced in the instant case with a possibility of future conflict between the Federal Power and the State Power as to who will control and supervise laundries. We believe this is a matter of vital public importance and any decision which the Court makes is extremely vital to the public itself. As before stated this is the first attempt on the part of the Federal Government to exercise jurisdiction over the laundries which have always heretofore been governed by State Acts and the States. As proof of this we hereby quote the many decisions which already have arisen and have been decided by the different States under their local Wagner Acts in construing laundries. All of these decisions represent decisions in laundry and dry cleaning establishments.

Massachusetts.

Loyal Crown Linen Service, Inc., et al., 1939 Mass. L. R. C., Case No. U. P. 251, Jan. 11, 1939; *Wash Rite Laundry Co., et al.,* 1938, Mass. L. R. C. Case No. U. P. 121, June 20, 1938; *White Cleaners & Dyers, Inc., et al.,* 1938, Mass. L. R. C. Case No. U. P. 147, June 20, 1938; *C. & W. Dyeing & Cleaning Co., Inc., et al.,* Mass. L. R. C. Case No. U. P. 10, Feb. 10, 1938; *Abe Lainer d/b/a Lainer's Cleaners & Dyers Co., et al.,* Mass. L. R. C. Case Nos. U. P. 101, 134, 139, April 27, 1938; *Francis V. and Edwin U. Cahill d/b/a Union Laundry, et al.,* Mass. L. R. C. Case No. U. P. 93, May 23, 1938; *Naif Makol World Cleaners & Dyers Co., et al.,* Mass. L. R. C. Case No. U. P. 85, May 23, 1938; *Howes Co., et al.,* Mass. L. R. C. Case No. U. P. 281, May 22, 1939; *Sani-Wash Laundry, et al.,* Mass. L. R. C. Case No. U. P. 391, Sept. 21, 1939; *Eastern Overall Dry*

Cleaning Co., et al. (1940), Mass. L. R. C. Case No. U. P. 396, Jan. 19, 1940; *Golden Bell Cleaners, Inc.*, 1940, Mass. L. R. C. Case No. C. R. 333, April 29, 1940; *Lewando's French Dyeing and Cleansing Co.*, 1940, Mass. L. R. C. Case No. C. R. 341, May 6, 1940; *Shub, J. H., et al.*, D. B. A., *American Dry Cleaning Co.* (1940), Mass. L. R. C. Case No. C. R. 347, May 20, 1940; *Bonanno Laundry & Supply Co.* (1940), Mass. L. R. C. Case No. C. R. 403, Nov. 1940; *Capitol Laundry Co.* (1940), Mass. L. R. C. Case No. C. R. 406, Nov. 6, 1940; *Farnsworth New Method Laundry, Inc.* (1940), Mass. L. R. C Case No. C. R. 375, Aug. 13, 1940; *Hub Laundry Co.* (1940), Mass. L. R. C. Case No. C. R. 424, Dec. 12, 1940; *Morgan Laundry Service, Inc.* (1940), Mass. L. R. C. Case No. C. R. 386, Sept. 12, 1940; *United Laundries Co., et al.* (1938), Mass. L. R. C. Case No. C. R. 27, Feb. 16, 1938.

New York.

Economy Clean Towel Supply Co., Inc., et al., 1938, N. Y. S. L. R. B. Dec. No. 198, July 20, 1938; *Stapleton Service Laundry, Inc., et al.* (1938), N. Y. S. L. R. B. Dec. No. 206, Sept. 23, 1938; *Consolidated Laundry Corp., et al.*, 1937, N. Y. S. L. R. B. Dec. No. 4, Sept. 16, 1937; *Fox Square Laundry Co., Inc., et al.*, 1939, N. Y. S. L. R. B. Dec. No. 669, Sept. 21, 1939; *Hill Top Laundry, Inc., et al.* (1940), N. Y. S. L. R. B. Dec. No. 838, Case No. W. E-156, Mar. 25, 1940; *Midtown Laundry Inc., et al.* (1940), N. Y. S. L. R. B. Dec. No. 804, Case No. S. E.-4197, Feb. 8, 1940; *Premier Linen Supply & Laundry Co., Inc., et al.*, 1939, N. Y. S. L. R. B. Dec. No. 738, Nov. 22, 1939; *Prompt Family Laundry, Inc., et al.* (1940), N. Y. S. L. R. B. Dec. No. 771, Jan. 9, 1940; *Quality Laundry Service, Inc., et al.* (1937), N. Y. S. L. R. B. Dec. No. 10, Nov. 1, 1937; *Tudor Laundry Co., et al.* (1939), N. Y. S. L. R. B. Case No. S. U. 3581, July 12, 1939.

Pennsylvania.

Budget Laundry Co., et al., Pa. L. R. B. Case No. 170, April 12, 1938; *Crandall, McKenzie & Henderson, Inc., et al.*, 1939, Pa. L. R. B., Dec. No. 92, Feb. 26, 1940; *Lincoln Laundry Co., et al.*, 1939, Pa. L. R. B. Dec. 136, Jan. 16, 1940; *Wilson Laundry Co., et al.*, 1939, Pa. L. R. B. Case No. 34, Oct. 9, 1939; *Community Laundry Co., Inc., et al.*, 1937, Pa. L. R. B. Case No. 123, May 13, 1939; *East Cleaners & Dyers, Inc., et al.*, 1938, Pa. L. R. B. No. 196, Apr. 20, 1939; *Liberty Laundry, et al.* (1939), Pa. L. R. B. Case No. 70, Nov. 21, 1939.

Wisconsin.

Waukesha Palace Laundry Co., et al., Wisc., L. R. B. Case No. 406, C-24, April 30, 1938; *Badger Nu-Way Cleaners, et al.*, Wisc., L. R. B. Case No. 31; Ce2, Dec. No. 19, Sept. 23, 1939: *Laundry Workers Int. Union, et al.* (1940), W. L. R. B. Case No. 74 Ce-11 Dec. No. 47 2/23/40.

Conclusion.

The decision of the Court below represents a wide departure from the principals governing laundry and dry cleaning establishments of which there are hundreds and thousands throughout the land.

Therefore, we respectfully submit that this petition for writ of certiorari should be granted.

H. C. A. Hofacker,
28 St. Nicholas Building,
Pittsburgh, Pennsylvania.
Attorney for White Swan Company.

July 10, 1941.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Argument	5
Conclusion	10
Appendix	11

CITATIONS

Cases:

Board of Bristol, Tenn. v. V. & SW. Ry., 15 I. C. C. 453	10
Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197	6, 10
Consumers Power Co. v. National Labor Relations Board, 113 F. (2d) 38	6
Ellis v. Inman, Poulson & Co., 131 Fed. 182	9
Fehr Baking Co. v. Bakers Union, 20 F. Supp. 691	10
In the Matter of Steubenville, Etc., Traction Co., 641 I. C. C. 517	10
Kansas City Ry. v. McAdow, 240 U. S. 51	9
National Labor Relations Board v. A. S. Abell Co., 97 F. (2d) 951	6
National Labor Relations Board v. Bradford Dyeing Ass'n, 310 U. S. 318	6
National Labor Relations Board v. Fainblatt, 306 U. S. 601	6
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1	6
National Labor Relations Board v. Norfolk Shipbuilding & Drydock Corp., 109 F. (2d) 128	6
National Labor Relations Board v. Sunshine Mining Co., 110 F. (2d) 780, certiorari denied, January 13, 1941, No. 352, October Term, 1940, 61 S. Ct. 447	6
Newport News Shipbuilding & Dry Dock Co. v. National Labor Relations Board, 101 F. (2d) 841, affirmed, 308 U. S. 241	6
Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453	6
Southern Colorado Power Co. v. National Labor Relations Board, 111 F. (2d) 539	7
Spokane & Inland R. R. v. United States, 241 U. S. 344	9
Virginia Electric & Power Co. v. National Labor Relations Board, 115 F. (2d) 414, certiorari granted, 61 S. Ct. 826, Nos. 25–26, October Term, 1941	6

Statutes: Page

Fair Labor Standards Act of 1938, 52 Stat. 1060, Sec. 13 (a) (2), 29 U. S. C., Supp. V, Sec. 213 (a) (2) 9

National Labor Relations Act, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*:

Sec. 2 (6) 11

Sec. 2 (7) 11

Sec. 10 (a) 11

Miscellaneous:

Documentary History, Amalgamated Clothing Workers of America: 1936–1938, 1938–1940 8

Laundry Age, October 1939 8

Laundry Age Yearbook, 1938 8

Laundry Workers International Union in Convention, Denver, Colorado, May 15, 1939 8

New York Times, September 15, 1937 9

New York World-Telegram, September 13 and 14, 1937 9

Report of the Executive Council of the American Federation of Labor to the Annual Convention, November 18, 1940 8

The Power Laundry is a Major Industry, Laundry Age, April 1938 8

U. S. Bureau of Labor Statistics, *Monthly Labor Review*, January and February 1938 9

U. S. Department of Commerce, Bureau of the Census, Biennial Census: 1935:

Cleaning and Dyeing Establishments, Rug Cleaning Establishments (1937) 7

Power Laundries (1937) 7

U. S. Department of Commerce, Bureau of the Census:

Census of Manufactures: 1929, *Power Laundries, Dyeing and Cleaning Establishments* (1931) 8

Metropolitan District, Population and Area, 1932 8

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 279

WHITE SWAN COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. III, 143–148) [1] is reported in 118 F. (2d) 1002. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. II, 168–181) are reported in 19 N. L. R. B. 1079.

[1] Pursuant to a stipulation of the parties (R. III, 151) the printed record for purposes of the petition for a writ of certiorari consists of three volumes. The first volume contains the portions of the record printed by the Company as an appendix to its brief in the Circuit Court of Appeals. The second volume contains the portions of the record printed by the Board as an appendix to its brief in the court below. The third volume contains the proceedings in the Circuit Court of Appeals.

JURISDICTION

The decree of the court below (R. III, 148–149) was entered on April 15, 1941. The petition for a writ of certiorari was filed on July 15, 1941. The jurisdiction of this Court is invoked under section 10 (e) of the National Labor Relations Act (Pet. 2).

QUESTION PRESENTED

Petitioner is a corporation engaged in operating a combined laundry, cleaning and dyeing establishment, located near a state line; during 1938 it purchased 28 per cent of its material and supplies in interstate commerce, and derived 18 per cent of its gross income from the servicing of garments collected from and delivered to points outside the state. The question is whether the National Labor Relations Act applies to its operations.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449; 29 U. S. C. Supp. IV, sec. 151 *et seq.*), are set forth in the Appendix.

STATEMENT

The National Labor Relations Board, upon the usual proceedings,[2] found that petitioner had en-

[2] Pursuant to charges and amended charges filed by Amalgamated Clothing Workers of America, Cleaners, Dyers, and Laundry Workers, Local 308, the National Labor Relations Board, on May 8, 1939, issued a complaint and notice of hearing (Bd. Ex. 2). The complaint, as amended, alleged, in substance, that petitioner by discriminatorily discharging

gaged in unfair labor practices affecting commerce and directed it to cease and desist from the unfair labor practices, to offer reinstatement and back pay to the three discharged employees, and to post appropriate notices. The facts as to jurisdiction, which alone is in issue here, were established by stipulation (R. II, 166–167) and undisputed testimony (R. II, 141–142, 144–148). They may be summarized as follows:

Petitioner operates a combined power laundry and dry-cleaning establishment in Wheeling, West Virginia, which " is engaged in washing, cleaning, purifying, scouring, bleaching, dying [*sic*], disinfecting, and renovating all types of wearing apparel and cloth goods" (R. II, 166). Petitioner collects and delivers garments for its customers. In this connection it owns and operates a fleet of delivery trucks. It maintains about 17 laundry and dry cleaning routes serving several hundreds of customers in Ohio and West Virginia. Three of peti-

---

and refusing to reinstate certain named employees and by certain other acts had engaged and was engaging in unfair labor practices affecting commerce within the meaning of section 8 (1) and (3), and section 2 (6) and (7) of the Act (Bd. Exs. 11 and 14). Petitioner filed an answer and amendments thereto challenging the jurisdiction of the Board and denying the commission of the unfair labor practices (Bd. Exs. 8 and 16). Pursuant to notice, a hearing was held before a trial examiner designated by the Board. Following an intermediate report, exceptions thereto by the Company and the Union, and oral argument thereon, the Board issued its findings of fact, conclusions of law and order (R. II, 168–181).

tioner's routes operate exclusively in the State of Ohio (R. II, 145–146, 167). One Ohio route, covering three towns in that State, serves approximately 300 customers (R. II, 145, 148).

In 1938, its gross income totalled $128,752.96 (R. II, 166–167). At the time of the hearing it employed 89 persons (Bd. Ex. 22, 23, 24). Almost 18 per cent of petitioner's gross income is derived from work done on articles brought to its plant from points in Ohio and redelivered in Ohio after leaving the plant.[3] More than two-thirds of the interstate transportation which this work necessarily entails is handled directly by petitioner's trucks. This represents work affording about 12.93 per cent of petitioner's gross income. The remaining out-of-state business which accounts for about 5 per cent of petitioner's gross income, is brought in by independent or "bob-tail" route operators who collect the articles in Ohio, bring them to the plant in West Virginia, and later redeliver them in Ohio. Petitioner's income from work involving interstate shipments during 1938 totalled $23,088.43 (R. II, 141–142, 166–167).

In the operation of its plant, the petitioner uses various supplies, consisting of soap, bluing, bleach, solvent, coal, water, paper, tape, and padding. During 1938, petitioner purchased laundry and dry cleaning supplies and equipment at a cost of $38,-

[3] Operations formerly extending into Pennsylvania had been discontinued at the time of the hearing (R. II, 147).

333.15. Twenty-eight per cent of these products, costing $10,810.90, was purchased and shipped to petitioner's plant from 12 States other than West Virginia (R. II, 166–167).

On May 31, 1940, the Board filed in the court below a petition for enforcement of its order (R. III, 129–132). Petitioner filed an answer requesting that the petition to enforce be dismissed (R. III, 133–135). Subsequent to oral argument, the court below certified to this Court certain questions respecting the jurisdiction of the Board (R. III, 135–138). On March 31, 1941, this Court dismissed the certificate (R. III, 150–151; No. 529, October Term, 1940). On April 15, 1941, the court below handed down its opinion (R. III, 143–148) and entered a decree (R. III, 148–149) enforcing the Board's order with a modification not here material.

ARGUMENT

1. The petitioner is directly and substantially engaged in interstate commerce by reason of its collection, servicing, and delivery of garments which pass to and from its plant in such commerce. About 18 percent of the petitioner's gross revenue, or some $24,000 per year, is derived from servicing operations performed upon garments which are brought to its plant in interstate commerce and which after being serviced are redelivered in such commerce to the owners. This collection and delivery of garments across state lines clearly constitutes interstate commerce and

is substantial in amount. Since interruption or stoppage of the Company's operations by industrial strife would burden and obstruct this interstate commerce, the Act under the controlling decisions of this Court applies to petitioner's operations.[4]

In addition, industrial strife would impede and curtail the purchase and receipt of substantial quantities of supplies and equipment which move in interstate commerce to petitioner's plant from other states. The direct purchase and receipt of this volume of materials by petitioner from out-of-state origins is in itself a ground for the Board's jurisdiction.[5]

---

[4] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–43; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 464–465; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 221–222; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604–605; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 326.

[5] *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board*, 101 F. (2d) 841 (C. C. A. 4), affirmed this Court, 308 U. S. 241, this jurisdictional point not being pressed in this Court; *National Labor Relations Board* v. *Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128 (C. C. A. 4); *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4); *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 115 F. (2d) 414, 416 (C. C. A. 4), certiorari granted, 61 S. Ct. 826, with respect to another point Nos. 25–26, October Term, 1941; *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 40–41 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 784 (C. C. A. 9), certiorari denied January 13, 1941, No. 352, October Term,

2. Petitioner urges that the limitation of the interstate commerce here involved to an area within a radius of about fifteen miles from the plant bars federal jurisdiction. The contention not only ignores the inflow of supplies, an alternative ground of the Board's jurisdiction, but it is clear that the broad and unqualified provisions in Section 2 (6) and (7) of the Act (*infra*, p. 11), afford no basis for speculation that Congress meant to withhold protection from interstate commerce of a substantial nature merely because it is conducted within a limited geographical area.

In the laundry and dry-cleaning industry, for example, the familiar hand laundry of former years had been largely replaced by mechanized establishments of considerable size engaged in power laundering and the cleaning and dyeing of garments.[6] The amount of interstate commerce to which these large servicing units give rise is suggested by the fact that during 1935, some 1,267 power laundries

---

1940, 61 S. Ct. 447, 619; *Southern Colorado Power Co.* v. *National Labor Relations Board*, 111 F. (2d) 539, 543 (C. C. A. 10). There are no contrary decisions.

[6] During the year 1929 about 6,800 "power" laundries employed more than 233,000 persons and received a gross income in excess of $541,000,000, while over 5,000 cleaning and dyeing establishments employed some 60,000 persons and had receipts totaling over $201,000,000. U. S. Dept. of Commerce, Bureau of the Census; *Biennial Census: 1935, Power Laundries* (1937), p. 4, and *Cleaning and Dyeing Establishments, Rug Cleaning Establishments* (1937), p. 3; see, also, *The Power Laundry is a Major Industry*, in *Laundry Age* (April 1938), p. 54. The individual units of the industry are large, the average receipts per unit being almost

doing a business in excess of $128,000,000 operated in 23 metropolitan areas in the United States which comprise territory in more than one state.[7] Among both the employees and the employers there exists extensive organization into nation-wide associations [8] and trade unions.[9] Frequent and bitterly contested strikes, some interstate in scope,[10] have

---

$80,000 in 1929 and 1,547 establishments reporting receipts in excess of $100,000 during that year. U. S. Department of Commerce, Bureau of the Census, *Census of Manufactures: 1929, Power Laundries, Dyeing and Cleaning Establishments* (1931), p. 10.

[7] U. S. Dept. of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), pp. 7–9; see *U. S. Dept. of Commerce of the United States, Metropolitan Districts, Population and Area, 1932*, pp. 10–13.

[8] 2,300 power laundries in the United States and Canada, handling 80 percent of the industry's entire volume, are members of the American Institute of Laundering. *Laundry Age*, October 1939, p. 3; *Laundry Age Yearbook*, 1938, p. 131.

[9] There are two national unions in the laundry industry, the Laundry Workers' International Union, affiliated with the American Federation of Labor, and the Laundry Workers Joint Board (Amalgamated Clothing Workers of America), affiliated with the Congress of Industrial Organizations. They have a combined membership of about 70,000 workers, almost one-third of all laundry employees. See *Laundry Workers' International Union in Convention*, Denver, Colorado, May 15, 1939; *Report of the Executive Council of the American Federation of Labor to the Sixteenth Annual Convention*, November 18, 1940, pp. 10, 19; and *Documentary History, Amalgamated Clothing Workers of America*, 1936–1938, p. 35; *id.*, 1938–1940, pp. 89–91.

[10] Of 12 interstate strikes in progress in October 1937, the laundry strike in the Cincinnati metropolitan area was the second largest. See U. S. Bureau of Labor Statistics,

given the industry a long history of industrial strife. There is no reason to suppose that Congress intended to permit a large and important portion of the nation's interstate trade to remain subject to interruption by the unfair labor practices which the Act proscribes.

3. Petitioner's claim (Pet. 9) that the decision below is inconsistent with interpretations of the Fair Labor Standards Act of 1938, Sec. 13 (a) (2)[11] overlooks the fact that Congress in that statute, in contrast to the National Labor Relations Act, expressly excluded a service organization the greater part of whose servicing is intrastate. Statutes containing no such exemption have been held to include even that portion of interstate commerce which is carried on wholly within areas of relatively small size.[12]

Monthly Labor Review, February 1938, p. 440. The laundry strike in the New York metropolitan area in September 1937 was the largest of 15 interstate strikes in progress at the time. See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, January 1938, p. 176; *N. Y. World Telegram*, September 13 and 14, 1937, and *New York Times*, September 15, 1937.

[11] Act of June 25, 1932, 52 Stat. 1060, 29 U. S. C., Supp. V, Sec. 213 (a) (2). That section provides that the wage-and-hour provisions of the statute shall not apply to "any employee engaged in any * * * service establishment the greater part of whose * * * servicing is in intrastate commerce; * * *."

[12] *Kansas City Ry.* v. *McAdow*, 240 U. S. 51 (Employers' Liability Act); *Spokane & Inland R. R.* v. *United States*, 241 U. S. 344 (Safety Appliance Act); *Ellis* v. *Inman, Poulsen & Co.*, 131 Fed. 182 (C. C. A. 9) (Sherman

4. The fact that state labor relations boards have in many states already assumed jurisdiction of laundries (Pet. 11–13) in no way indicates that there is any lack of federal jurisdiction nor that Congress did not intend fully to exercise it. *Consolidated Edison Company* v. *National Labor Relations Board*, 305 U. S. 197, 223–224.

CONCLUSION

The decision of the court below is correct. There is no conflict of decisions. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Acting Solicitor General.
WARNER W. GARDNER,
Attorney.

ROBERT B. WATTS,
General Counsel.
LAURENCE A. KNAPP,
Associate General Counsel.
RUTH WEYAND,
Attorney,
National Labor Relations Board.

AUGUST 1941.

Anti-Trust Act); *Fehr Baking Co.* v. *Bakers Union*, 20 F. Supp. 691 (W. D. La.) (Same); *In the Matter of Steubenville, Etc., Traction Co.*, 64 I. C. C. 517 (Interstate Commerce Act); *Board of Bristol, Tenn.* v. *V. & SW. Ry. Co.*, 15 I. C. C. 453 (Interstate Commerce Act).

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151, *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * *

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

U. S. GOVERNMENT PRINTING OFFICE : 1941